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THE RELATION OF THE COLONIAL FEE-SYSTEM TO POLITICAL LIBERTY.

The development of the constitution of the United States has been traced with considerable accuracy by writers on constitutional and political history, but the evolution of the ideas of political liberty in the minds and consciousness of the people, which manifested itself through these constitutional forms, as well as through revolutionary methods, has received less attention than it deserves. Historians have explained how the constitution has grown to be what it is, but they have not explained why it has so grown. How the people imbibed those ideas of political liberty, for the preservation of which they were willing and able to stand together in the Revolution, is a question which can not be answered by explaining how they gained skill in parliamentary practice.

The unexplained problem is, how shall we account for the difference between the political ideas and ideals of the colonists which they brought from Europe, and the notions of political liberty which were entertained by the signers of the Declaration of Independence? The first colonists were thoroughly imbued with all the seventeenth century notions of royal prerogatives and royal powers, and never dreamed of denying the right of the governor to establish courts, appoint officials, prescribe fees of office and at times even to levy taxes, while the signers seemed to have grasped the idea of popular sovereignty in its widest sense.

The transition from the one to the other is not explained by the general statement that the colonists found themselves in a new environment and naturally developed political ideas suited to it. It is not explained by simply pointing to the fact that many of the colonists had come to the New World in order to enjoy liberty of conscience. It is not explained

by enlarging upon the political genius everywhere manifested by the Anglo-Saxon race, and by theories based on the assumption that American political liberty owes its existence to the Anglo-Saxon spirit of these early settlers. Nor is the problem solved by the more plausible, but inadequate explanation, that political liberty was evolved through the numerous struggles for control over taxation, and through the indirect consequences of this control when once acquired. It is often contended that the colonial assemblies, by refusing to vote a salary to any official appointed by the governors, unless the appointment met their approval, gradually absorbed not only the control over the appointive power, but many other valuable privileges as well. That political privileges were obtained in this way is an important fact, and should receive due consideration. But as a historic fact it represents simply the trend of public opinion, and the drift of the political ideas of the times, and like a log in a river it shows the direction of the current.

Historians have, as a rule, over-emphasized the importance of colonial taxation and the struggles over its control, doubtless because of the prominence which this subject had in the legislative contests with the governors and the frequent references made thereto in the laws and documents of the period. In reality taxation as a means of raising revenue was an extraordinary resource, and was employed only when money was needed for some special purpose, as for fortifications, for maintaining troops, legislative bodies, and, at times, indeed, to pay the salaries of some of the executive officers. The bulk of the current expenses was, however, raised by means of fees of office, collected by each official for his services. Nearly every colonial official, from the governor down to the fence-viewer or pound-master, was supported more or less by these fees and perquisites of office. Accounts were rarely kept, and the appointees of the governor usually considered themselves responsible to no one, least of all to the colonial assembly, for the emoluments

of their respective positions. The result has been, therefore, that this important branch of colonial revenues, together with its manifold influences on colonial institutions, has received little or no attention from students of political history.

The contention that political liberty was developed through disputes over taxation is of some importance, but it is not a sufficient explanation of the problem at hand. The same objection can be urged against the following explanation offered by Mr. Lodge, in speaking of the attitude of the early Virginia legislatures to their governors:*

"This nagging resistance to the governor, simply because he was a governor, and therefore made to quarrel with, now begins. It was this snarling and often unreasonable and factious, but ever persistent and watchful opposition which slowly trained the people, accustomed them to parliamentary and constitutional principles, and gradually raised their political thought to the level of 1776."

The liberty loving spirit of the American colonists was not born in the colonial legislative halls, nor were their ideas of political liberty fostered by useless quibbles over trifling and unimportant questions. The struggles which mark each epoch in the development of this spirit were participated in not only by the burgesses, but by the people themselves, on the distant frontiers, as well as in the densely populated centres. How else can we explain the fact that the more distant and scattered agricultural population formed in one sense the backbone of the revolution? These struggles were not precipitated, because the colonists had a governor with whom they chose to quarrel, with or without sufficient cause, but they were the result of years of oppression and maladministration on the part of these very governors and their subordinates. This oppression was due to the fact that the fees of office had been arbitrarily increased in amount and multiplied, until they became, in one sense, more burdensome than direct taxes.

* "History of the English Colonies in America." p. 26.

It is a notorious fact that the colonial governors were not all models of puritan simplicity and honesty. Many of them did not scruple to avail themselves of their positions to exact as much money as possible from the colonies under their control. The further fact is also well known that insolvents and spendthrifts were frequently given commissions as governors in the American provinces in order to enable them to retrieve their wasted fortunes, or to escape from their creditors.* Under the proprietary governments the governors were continually tormented by the proprietors to find lucrative places for the latter's friends and relatives. In the charter colonies we find the same state of affairs. The governors themselves often acted in the capacity of judges,† and appointed their own friends and relatives, or worthless favorites of the crown to the subordinate positions. These officials regarded their positions, not as public trusts, but as legitimate sources of revenue, to be used for personal gain.

That this idea was prevalent is shown by the fact that many of the colonial offices were farmed out to unscrupulous deputies who usually succeeded in obtaining large incomes for themselves, in addition to the sums paid to the nominal officers.‡ In this way positions, which normally would have yielded but a few hundred pounds, were made to produce many times that amount. Thus the office of governor of Virginia is reported to have yielded \$80,000 to the nominal governor residing in England, and \$20,000 to the acting governor in the colony.§ The governor of New York is said to have collected \$65,000 a year in land patent

* See Hildreth's "History of the United States." Vol. ii, pp. 216-20.

† The governor of Virginia was also lieutenant-governor, treasurer, chancellor, chief judge of all courts, president of the council, bishop and ordinary. Bancroft's "History of the United States." Vol. iii, p. 22.—See also "Civil List of New York," 1887, p. 73.

‡ The extortionate fees collected by the deputy to whom Secretary Randolph of Massachusetts had farmed the post of secretary was one of the grievances of the people against Governor Andros' administration.—See Doyle's "English Colonies in America." Vol. iv, p. 247.

§ Hildreth, *op. cit.*, Vol. ii, p. 235.

fees, besides which the secretary, collector and other officers also received liberal fees for their services.*

When it is remembered that the regular salaries granted the governors by the colonial assemblies rarely exceeded \$10,000, it is evident that the control exercised by means of the power to regulate taxes was slight compared with the influence which these officials exercised through their power to levy fees. This oftentimes arbitrary power can scarcely be understood by one who is accustomed to the supremacy of law of the nineteenth century. The governors and their subordinates interfered with and levied toll upon nearly every colonial institution; they collected fees for licenses of various kinds, for permits and for privileges of all kinds which the colonists desired. Titles to land were tampered with, in order to increase the income from land patents.† The courts were frequently, and in some colonies constantly, made instruments of extortion,‡ and the right of appeal was rendered worthless, because the same judges often sat in the higher courts, as well as in the lower.§ Matters were even carried to such extremes that new courts|| were created for the special purpose of extracting more fees from the pockets of the people. The formation of new counties and boroughs was forbidden unless fees were paid to the governor for the privilege.¶ It was through a long series of protests and petty revolutions against such exactions that the people gradually became conscious of their political rights. These disputes were not confined to the legislative bodies, but were of such a

* *Ibid.*

† Governor Clarke amassed a fortune of \$100,000 in seven years in New York, and Governor Clinton made \$80,000 in a short time. Roberts' "History of New York," p. 296.

‡ "For the sake of acquiring fees he [Governor Sothel of North Carolina] disputed the best of titles, and vexed the fairest traders." Hugh Williamson's, "History of North Carolina." Vol. ii, p. 140.

§ See Bancroft, *op. cit.*, Vol. ii, p. 204.

|| Court of Chancery established by Governor Effingham of Virginia. Hildreth, *op. cit.*, Vol. ii, p. 173.

¶ See Lodge's "History of the English Colonies in America," p. 144.

character that the people themselves as individuals were vitally interested. They began to inquire by what authority these so-called fees were collected, and there gradually dawned upon their consciousness the idea that all men are born free and equal, and that the governors should derive their authority from the consent of the governed. It thus appears that the doctrine that taxation without representation is tyranny, was not a new idea which the people had suddenly discovered in 1776, but it had in its essence been discussed and asserted for nearly a century. The conclusion of each dispute left the people more conscious of their political rights, and led to stronger demands for their recognition.

None of the colonies was entirely free from struggles of the kind; all were taught their lesson in political liberty in essentially the same school. The citizens of Massachusetts were repeatedly opposed to their governors on questions of fees of office and official prerogatives. As early as 1634, Governor Winthrop* was forced by a political revolution to give up his position as magistrate to Governor Dudley, and was compelled to make a statement of his accounts. The fees collected by Governor Andros created such violent opposition that he too was finally displaced.† His successors do not appear to have been less exacting in their demands, for the protests of the colonists became more and more frequent and emphatic. In 1729 the general court, after a protracted quarrel with the governor over the fees of office which he might collect, finally sent a representative to England to lay their grievances before the king.‡ In the State of New Jersey a revolution was begun against Governor Carteret on the very same issue.§

The same spectacle was witnessed again and again in Virginia. The objections to the fees exacted by Governor

* Hildreth, *op. cit.*, Vol. i, p. 199.

† *Ibid.*, Vol. ii, p. 111. See also Doyle, Vol. iv, p. 247.

‡ Hildreth, *op. cit.*, Vol. ii, p. 346.

§ *Ibid.*, p. 53.

Berkeley* resulted in a number of complaints, which were laid before the Royal Commission in 1677. The privy council finally advised the governor to abandon a few fees, especially those claimed for the granting of attorneys' licenses.† This advice did not help matters much, for Governor Effingham,‡ like his predecessors in office, continued to charge excessive fees for probating wills, for land grants and other services. In Maryland the movement is even more marked and shows how completely the people had begun to grasp the idea of popular sovereignty. In a contest over the right of the legislature to regulate the port duty, which up to that time had been collected by the governor, nominally for the support of fortifications, the legislature finally passed a resolution to the effect that:

"It was not their intencion to deprive the governor of an honorable support, but only to assert and maintain for themselves, their constituents and posterity that principal and most essential branch of liberty, to which they conceive themselves entitled as subjects of Great Britain, of not being liable to the payment of money, tax impost or duty except such as shall be warranted, raised and assessed by the laws of the province."§

A similar conflict arose in 1754 over the so-called duty on ordinary licenses, which the lower house claimed as public revenue.|| The contest grew fiercer when the governor, in 1770, attempted to regulate the fees for licenses and other privileges, by proclamation.¶ It was contended on the part of the people that these fees were in the nature of taxes, and that any attempt to establish them by proclamation was in reality an assumption of the power to levy taxes without the authority of the assembly. Thus the contest went on year after year, without any material gains on the

* *Ibid.*, Vol. i, p. 555. For an account of the struggle over the "pisto'e" fee for land-patents see Dinwiddie "Papers," Vol. i, pp. 44-47, p. 363 in "Virginia Historical Papers."

† *Ibid.*, Vol. ii, p. 173.

‡ *Ibid.*, Vol. i, p. 563.

§ McMahon's "History of Maryland," pp. 179-80.

¶ *Ibid.*, p. 298.

¶ Hildreth, *op. cit.*, Vol. ii, p. 568.

side of the people, but they were learning a lesson which many nations have yet to learn, in that their convictions as to their rights and liberties were day by day becoming more firmly fixed.

This is especially apparent if we compare the feebleness and hesitancy of the people in the earlier struggles with the firmness and determination manifested later on. As an example the failure of Bacon's rebellion in Virginia may be directly ascribed to the lack of political self-consciousness and self-assertiveness among the people at large.* The vacillation manifested in this struggle is quite different from their decisive action in resistance to Governor Dunmore after the passage of the port-bill. In the Carolinas the struggles were even more fierce. The well-known Culpepper insurrection† against Miller was caused by grievances of the same character as those already enumerated, and in 1688 Governor Sothel was driven from the helm for the same reasons.‡ When the legislature of North Carolina attempted to investigate the exorbitant fees collected by Governor Burrington its complaint was rejected as an unconstitutional assumption of authority on the part of the assembly.§ The struggle was continued, however, and even resulted in acts of violence. Many riotous outbreaks were caused more directly by the high land-patent fees collected by Lord Granville's agent.|| The people in the back counties especially had suffered very greatly from extortionate fees exacted by all the petty officers of the court and land offices. The opposition to the collection of these fees developed in 1766 into associations known as "Regulators," whose purpose was to protect the interests of the

* There were no doubt other reasons which should be taken into consideration, but back of these reasons lies the fact that the people lacked that community of principles and interests which alone can make a revolution successful.

† Hildreth, *op. cit.*, Vol. ii, p. 40; also J. W. Moore, "History of North Carolina," p. 23.

‡ Hildreth, *op. cit.*, Vol. ii, p. 41.

§ *Ibid.*, Vol. ii, p. 339; also Lodge, *op. cit.*, p. 142.

|| *Ibid.*, pp. 145-46.

people, and oppose the illegal demands of the fee-collectors. The rapid spread of this movement made the associations quite successful at first in resisting the demands of the governor and his agents. The uprising was finally quelled with the aid of troops, after an engagement had been fought at Alamance, in which the Regulators were defeated.

The experience of the other colonies is but a repetition of the foregoing. Frequent outcries were raised, not only against the fees collected by the governors, but against the fees of sheriffs, judges and other inferior officers. In New York, after a long series of contests on just such questions,* the legislature finally succeeded in gaining partial control over both the appointments of the governors and the fees of office which should be allowed. The liberty-loving settlers of Vermont† rose in open rebellion against the right claimed by Governor Wentworth to charge excessive land-patent fees, and the "Green Mountain Boys," afterward so famous in the revolution, showed thus early that they had convictions concerning their rights and were willing, if necessary, to fight for them.

Through these unsuccessful revolts the people were being led, unconsciously almost, to discuss and formulate their own privileges as opposed to the prerogatives of governors and the crown. In this way the colonists gradually evolved the principles which were afterward laid down in the Declaration of Independence. Furthermore, the disputes tended to keep alive the spirit of liberty better than all the parliamentary struggles between the governors and the legislatures. The colonists were ever on the alert to prevent infringement upon their rights, and were ready to seize upon and overthrow old established prerogatives whenever an opportunity offered itself. It is for this reason that we see the colonial governors, in spite of their aggressiveness,

* "Civil List of New York," 1887, p. 73. Among the fees collected by Governor Crosby was £150 for a trip to Albany and £750 for services in London.

† Lodge, *op. cit.*, p. 164. Ellis H. Roberts' "History of New York," pp. 265-67.

constantly losing ground to these self-assertive frontiersmen.

The final struggle, which resulted in the achievement of American independence, was but a repetition, in a more vigorous form, of the protests which had been lodged again and again against the imposition of illegal and extortionate taxes under the guise of fees. This fact becomes very plain when the circumstances leading up to the passage of the Stamp Acts are explained. It is perhaps well known that no taxes of any importance had been levied on the colonies by parliament up to 1765.* The intercolonial duties on enumerated articles produced little more than sufficient revenue to pay the expenses of the custom houses, and had for their purpose not revenue, but regulation of trade.† The trifling surplus paid into the British treasuries was a mere incident of that regulation.‡ Yet the colonial custom houses, though hitherto maintained with no intention of collecting taxes, might easily be adapted to that purpose: and as the colonies were already accustomed to the payment of parliamentary duties, they might not readily distinguish between duties for regulation and duties for revenue. The first part of the scheme, submitted by Lord Granville, appears to have proceeded on this idea.§ The second part of the act of 1765 is fully as significant as the first, and was based on the fact that Englishmen in the home country had repeatedly submitted to laws increasing the various license fees, until as license taxes they became an important source of British revenue. Knowing, as the ministry did,

* Hildreth, *op. cit.*, Vol. ii, p. 518.

† *Ibid.*, p. 213.

‡ Dowell, "History of Taxation in England," Vol. ii, p. 147.

§ "Is not the Post Office, which they have long received, a tax as well as a regulation?" was asked Benjamin Franklin in evidence before the committee on the Stamp Act in 1765. He replied: "No, the money paid for the postage of a letter is not in the nature of a tax. It is merely a *quantum meruit* for a service done. No person is compellable to pay money if he does not choose to receive the service. A man may still, as before the act, send his letter by a servant or special messenger or friend if he thinks it cheaper or safer."—Dowell *op. cit.*, Vol. ii, p. 147.

that similar license fees had long been collected by the governors and legislatures of the colonies, they naturally concluded that the same scheme might be applied in the New World, which had been so successfully carried out in the Old. They therefore added a clause to the Stamp Act, providing for the imposition of license taxes on the sale of spirituous liquors and wines. But the colonists had been burdened too long by taxes levied under similar pretexts by their own governors, and were not slow to see through the flimsy pretences of the ministry. Their previous training had taught them the uselessness of verbal and written protests, and caused them to take immediate and decisive action as soon as the passage of the Stamp Act was announced. To this previous training may largely be ascribed the fact that the whole country stood together from the very start, and that the Western pioneers and frontiersmen were among the first to stand up for the principles over which the revolution was fought. It is thus clear that the colonial fee-system, including its abuses, sustains an important relation to the dissemination and growth of those ideas of freedom and political liberty on which Americans justly pride themselves.

The contention is not here made that the relation is of a causal character, much less that the fee-system is the only cause. The racial characteristics of the settlers, the succession of events which constitutes their history and many other elements must be taken into consideration for a complete solution of the problem. All that is claimed is, that the colonial fee-system furnished a bone of contention about which circled the disputes and struggles which fostered and developed the spirit of liberty and the self-consciousness of the American pioneers.

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